

ISSUE DATE:

March 17, 2014



PL131145

Ontario
Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Russel Lalovich
Subject:	Minor Variance
Variance from By-law No.:	8600
Property Address/Description:	481 Askin Avenue
Municipality:	City of Windsor
Municipal File No.:	A-022/13
OMB Case No.:	PL131145
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APPEARANCES:

Parties

Russel Lalovich

Parma Yarkin and Alan Richardson

Counsel

Alan R. Patton

R. Craig Stevenson

MEMORANDUM OF ORAL DECISION DELIVERED ON MARCH 5, 2014 BY C. HEFFERON AND ORDER OF THE BOARD

BACKGROUND

[1] In 2013, Russel Lalovich ("applicant") acquired a beneficial interest in the lands and the 90 plus years old, 1½ storey home municipally known as 481 Askin Avenue, Windsor. After applying for a building permit, he commenced general clean-up of the landscaping and remodeling of the interior of the home. At some point in this process, it was brought to the attention of the Chief Building Officer through the intervention of a neighbour that although a building permit application had been made, no building permit had actually been issued.

[2] The Chief Building Officer for the City of Windsor ("City") subsequently informed Mr. Lalovich that because he proposed converting the house from a single unit to a

duplex, he would require minor variances from the frontage and side yard setback provisions of City of Windsor Zoning By-law No. 8600 ("By-law").

[3] His application for these minor variances was denied by the September 25, 2013 decision of the City of Windsor Committee of Adjustment ("Committee").

[4] Mr. Lalovich has appealed that decision to the Ontario Municipal Board ("Board").

[5] His appeal to the Board was opposed by a number of local residents as well as by Parma Yarkin and Alan Richardson ("respondents").

MATTER BEFORE THE BOARD

[6] The applicant has proposed a frontage of 10.16 metres ("m") whereas s. II (1)(b)(i) of the By-law requires a minimum frontage of 12 m for a duplex dwelling.

[7] The applicant has proposed a south side yard setback of 0.45 m, whereas s. II (1)(b)(vi) of the By-law requires a minimum side yard setback of 2.5 m.

[8] The applicant has proposed a north side yard setback of 0.91 m, whereas s. II (1)(b)(vi) of the By-law requires a minimum side yard setback of 2.5 m.

LEGAL FRAMEWORK

[9] In order for a variance from the provisions of a municipal zoning by-law to be authorized it must satisfy the four tests under s. 45(1) of the *Planning Act* ("Act"), it must conform to the general intent and purpose of both the Official Plan ("OP") and Zoning By-law for the municipality; it must be minor; and it must be desirable for the appropriate development of the property. If it fails even one of these tests, the Board must refuse to authorize it.

RESPONDENTS' POSITION

[10] The respondents contend that the lot is too small to accommodate a duplex. For a duplex, the By-law requires a greater lot width as well as greater side yard setbacks than are available on the subject property.

[11] The respondents also expressed concern that the additional unit will bring even more non-owners (renters) to the area, which they maintained is a close knit community of predominantly owner-occupied single unit dwellings.

PARTICIPANTS' POSITION

[12] The Board admitted the following two members of the local community as participants to these proceedings: Robert Nagy and Gary Langill. Alan Richardson, one of the parties, also testified. They expressed concern that the presence of renters in their primarily owner/occupied community would not take careful care of the property. They explained that in their experience, renters do not care for a property as well as would an owner/occupant. They also expressed their concern about parking, noise from late night partying, increased fire risk and dust from vehicles driving up and down the graveled public laneway that runs the length of the block between Askin Avenue and Randolph Avenue.

[13] One of the participants expressed concern about local residents' personal safety from unknown persons that may be encountered in that unlighted laneway at night. This threat is, he suggested, exacerbated by the increased numbers of people that duplexing the subject property would bring to the area.

APPLICANT'S POSITION

[14] The applicant contends that the exterior of the building will remain exactly the same as before. The frontage will be the same as will the side yard setbacks, and no variances are required for parking. There will be no impact on the surrounding properties beyond what there had always been. The only change will be to the interior. The existing single dwelling unit will become a duplex dwelling, which is a permitted use in an RD 2.1 zone.

EVIDENCE AND FINDINGS

[15] The Board qualified Gary Blazak, a registered professional planner retained by the respondents, to give opinion evidence on land use planning.

[16] Mr. Blazak began by discussing Provincial intensification policies as set down in policy 1.3 of the 2005 Provincial Policy Statement ("PPS"). The Board notes that policy

4.5 of the PPS provides that the Official Plan is intended to implement Provincial policies locally. He testified that Askin Avenue was the wrong place for intensification of the type proposed by the applicant. He advised that the municipality should have specified in the Official Plan the areas that it intends to be subject to the intensification mandated in the PPS.

[17] He put forward his professional opinion that the application does not, therefore, conform to the general intent and purpose of the Official Plan and is not consistent with the PPS.

[18] He advised that the subject property was built in the 1920s or '30s, which was decades before the first zoning by-law in this area. He pointed out that the lot is one of the smallest, if not the smallest, in the 400 and 500 blocks between Askin and Randolph Avenues, and that the house that had been constructed on that lot is, by today's standards, "too big" for the lot. The dimensions of the house do not allow, for example, for side yard setbacks of the scale that would be required today under the By-law. The By-law today requires 2.5 m side yard setbacks. He contended that doubling the number of units in the house will double the impact on the surrounding properties.

[19] He testified that the proposed duplexing of the subject property is not therefore desirable for the appropriate development of the property.

[20] The area is predominantly composed of single unit, owner-occupied detached homes. Additional renters besides those who already live in the area, will have an especially adversely impact on the closest neighbours. The proposal is not therefore minor.

[21] He also advised that since the proposal does not satisfy the side yard setback and minimum frontage requirements in the By-law, it does not conform to the general intent and purpose of the By-law. For all the above reasons, the application should, he contended, be refused.

[22] The Board qualified Karl Tanner, a registered professional planner retained by the applicant, to give opinion evidence on land use planning.

[23] Mr. Tanner testified that policy 1.1. of the PPS is abundantly clear on the need for intensification in order to make more efficient use of existing infrastructure and public services in settlement areas. Policy 1.1.1(b) also indicates a direction “to accommodate an appropriate range and mix of residential ... uses to meet long-term needs.”

[24] Mr. Tanner also contended that the OP is clear on the need for intensification and more efficient use of existing infrastructure and services in residential areas. The OP designates the subject lands as Residential (Policy 6.3) and directs that:

In order to develop safe, caring and diverse neighbourhoods, opportunities for a broad range of housing types and complementary services and amenities are provided.

[25] Policy 6.3.1 sets out the policy objectives of the OP. Policy 6.3.1.1 provides for a range of housing forms and tenures and policy 6.3.1.3 promotes intensification, infill and redevelopment. Policy 6.3.2.13 provides that “Council shall encourage the provision of affordable... housing.”

[26] On the un-contradicted evidence of Mr. Tanner, the Board finds that the proposal conforms to the general intent and purpose of the OP and the PPS.

[27] Mr. Tanner advised that the residential district (RD2.1) zoning on the 400 and 500 blocks bounded by Askin Avenue and Randolph Avenue permit single, semi-detached as well as duplex housing. This he testified demonstrates the conformity of the application with the general intent and purpose of the By-law. The Board agrees.

[28] The By-law permits a total of four parking spaces on the property – three at the rear and one at the front. As well, each property is allowed two on-street, paid permit-controlled parking spaces. Therefore, he contended, there should be ample parking for the estimated maximum seven future occupants of the house.

[29] He explained that the test of “minor” has two components or aspects – the mathematical or quantitative as well as the impact of the proposed variance on surrounding properties. Of the two, he stated that in his professional opinion, the key consideration is potential adverse impact on surrounding properties. Since that these exact same side yard setbacks and lot width have not proven to have had any adverse impact on the surrounding properties for over 90 years, the potential for adverse impact must therefore be minor. The Board agrees.

CONCLUSION

[30] An underlying theme of the evidence the Board heard in the hearing was that students would be the target renters for the proposed new duplex. In his final summation, Alan Patton, counsel for the applicant, suggested that the respondents' objective was to keep student renters out of their immediate neighbourhood. He submitted that such an objective is contrary to jurisprudence in this Province. The Board notes that the subject property is located in very close proximity to the University of Windsor campus. The University is a major centre of learning in the Province as well as one of the most important employers in the City. It represents an obvious and convenient location for students seeking to live near the place they study as well as for staff seeking to live near their workplace.

[31] On the evidence of Mr. Tanner, the Board finds that the proposed duplex is consistent with the PPS, conforms to the general intent and purpose of the OP and conforms to the general intent and purpose of the By-law. The Board also finds that the proposed minor variances are desirable for the appropriate development of the property and that the variances requested are minor. The Board also accepts Mr. Tanner's assertion that the requested minor variances represent good planning.

ORDER

[32] The Board orders the appeal is allowed and the requested minor variances from the side yard setback and lot width provisions of Zoning By-law No. 8600 are authorized.

"C. Hefferon"

C. HEFFERON
MEMBER